

(3) The validity or propriety under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian.

History: 1987 a. 191.

SECTION 21. 880.69 of the statutes is renumbered 54.886.

SECTION 22. 880.695 of the statutes is renumbered 54.888, and 54.888 (1), (2), and (6), as renumbered are amended to read:

54.888 (1) A person nominated under s. ~~880.62~~ 54.858 or designated under s. ~~880.65~~ 54.870 as custodian may decline to serve by delivering a valid disclaimer under s. 854.13 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under s. ~~880.62~~ 54.858, the person who made the nomination may nominate a substitute custodian under s. ~~880.62~~ 54.858; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under s. ~~880.65~~ 54.870 (1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under s. ~~880.625~~ 54.860 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under s. ~~880.625~~ [✓] 54.860 or to require the custodian to give appropriate bond.

History: 1987 a. 191; 1997 a. 188.

SECTION 23. [✓] 880.70 of the statutes is renumbered [✓] 54.890[✓] and 54.890 (1) (b), (3) [✓] and (4), as renumbered, are amended to read: X

54.890 (1) (b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under s. ~~880.69~~ [✓] 54.886 to which the minor or the minor's legal representative was a party.

(3) The court, in a proceeding under ss. ~~880.61 to 880.72~~ [✓] 54.854 to 54.898 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account. ✓

(4) If a custodian is removed under s. ~~880.695~~ [✓] 54.888 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History: 1987 a. 191.

SECTION 24. [✓] 880.705 of the statutes is renumbered [✓] 54.892[✓] and 54.892 (1) and X
(2), as renumbered, are amended to read:

54.892 (1) The minor's attainment of 21 years of age with respect to custodial property transferred under s. ~~880.625 or 880.63~~ [✓] 54.860 to 54.862;

(2) The minor's attainment of 18 years of age with respect to custodial property transferred under s. ~~880.635 or 880.64~~ 54.864 to 54.866; or

History: 1987 a. 191.

SECTION 25. 880.71 of the statutes is renumbered 54.894 and amended to read:

54.894 Applicability. Sections ~~880.61 to 880.72~~ 54.854 to 54.898 apply to a transfer within the scope of s. ~~880.61~~ 54.856 made after April 8, 1988, if:

(1) The transfer purports to have been made under ss. 880.61 to 880.71, 1985 stats.; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of ss. ~~880.61 to 880.72~~ 54.854 to 54.898 is necessary to validate the transfer.

History: 1987 a. 191.

SECTION 26. 880.715 of the statutes is renumbered 54.896 and amended to read:

54.896 Effect on existing custodianships. (1) Any transfer of custodial property as defined in ss. ~~880.61 to 880.72~~ 54.854 to 54.898 made before April 8, 1988, is validated notwithstanding that there was no specific authority in ss. 880.61 to 880.71, 1985 stats., for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) Sections ~~880.61 to 880.72~~ 54.854 to 54.898 apply to all transfers made before April 8, 1988, in a manner and form prescribed in ss. 880.61 to 880.71, 1985 stats., except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on April 8, 1988.

(3) Sections ~~880.61 to 880.705~~ 54.854 to 54.892 with respect to the age of a minor for whom custodial property is held under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after March 23, 1972 and before April 8, 1988.

(4) To the extent that ss. ~~880.61 to 880.72~~ 54.854 to 54.898, by virtue of sub. (2), do not apply to transfers made in a manner prescribed in ss. 880.61 to 880.71, 1985 stats., or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of ss. 880.61 to 880.71, 1985 stats., does not affect those transfers, powers, duties and immunities.

54.854 to 54.898

History: 1987 a. 191.

SECTION 27. 880.72 of the statutes is renumbered 54.898 and amended to read:

54.898 Uniformity of application and construction. Sections ~~880.61 to 880.72~~ 54.854 to 54.898 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ss. ~~880.61 to 880.72~~ among states enacting it.

History: 1987 a. 191.

SECTION 28. Subchapter IV (title) of chapter 880 [precedes 880.75] of the statutes is repealed.

SECTION 29. 880.75 of the statutes is renumbered 54.92.

SECTION 30. 880.76 of the statutes is renumbered 54.93, and 54.93 (1), (2), and (3), as renumbered, are amended to read:

54.93 (1) DEFINITIONS. All definitions in s. ~~880.75~~ 54.92 (1) (a) to (e) and (g) shall apply in this section, unless the context otherwise requires. "Third party" is a person other than a bank, broker, transfer agent or issuer who with respect to a security held

by an incompetent or spendthrift effects a transaction otherwise than directly with the incompetent or spendthrift.

(2) SECURITY TRANSACTIONS INVOLVING INCOMPETENT OR SPENDTHRIFT; LIABILITY.

A bank, broker, issuer, third party or transfer agent incurs no liability by reason of his or her treating an incompetent or spendthrift as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge that the holder of the security is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of his pendens as provided in s. ~~880.215~~ [✓] 54.47. Except as otherwise provided in this section, such a bank, broker, issuer, third party or transfer agent may assume without inquiry that the holder of a security is not an incompetent or spendthrift.

(3) ACTS NOT SUBJECT TO DISAFFIRMANCE OR AVOIDANCE. An incompetent or spendthrift, who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, third party or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office

acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge that the holder is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of his pendens as provided in s. 880.215 54.47.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.76; 1993 a. 486; 1999 a. 185.

SECTION 31. Subchapter V (title) of chapter 880 [precedes 880.81] of the statutes is repealed.

SECTION 32. 880.81 of the statutes is renumbered 54.950, and 54.950 (3), (4), (7) and (12), as renumbered, are amended to read:

54.950 (3) ~~“Conservator”~~ Notwithstanding s. 54.01 (3), “conservator” means a person appointed or qualified by a court by voluntary proceedings to manage the estate of an individual, or a person legally authorized to perform substantially the same functions.

(4) ~~“Court”~~ Notwithstanding s. 54.01 (4), “court” means the circuit court of this state.

(7) ~~“Guardian”~~ Notwithstanding s. 54.01 (9), “guardian” means a person appointed or qualified by a court as a guardian of the person or estate, or both, of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(12) ~~“Personal representative”~~ Notwithstanding s. 54.01 (23), “personal representative” means an executor, administrator or special administrator of a

decedent's estate, a person legally authorized to perform substantially the same functions or a successor to any of them.

History: 1991 a. 246.

SECTION 33. 880.815 of the statutes is renumbered 54.952[✓] and 54.952 (8), as[✓] renumbered, is amended to read:

54.952 (8) ~~This subchapter does~~ Sections 54.950 to 54.988 do not displace or restrict other means of creating trusts. A trust whose terms do not conform to this subchapter may be enforceable according to its terms under other law.

History: 1991 a. 246.

SECTION 34. 880.82 of the statutes is renumbered 54.954.

SECTION 35. 880.825[✓] of the statutes is renumbered 54.956.

SECTION 36. 880.83[✓] of the statutes is renumbered 54.958[✓] and 54.958 (1),[✓] as[✓] renumbered, is amended to read:

54.958 (1) Unless otherwise directed by an instrument designating a custodial trustee pursuant to s. 880.82 54.954, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator or guardian of the estate may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds \$10,000, the transfer is not effective unless authorized by the court.

History: 1991 a. 246.

SECTION 37. 880.835 of the statutes is renumbered 54.960[✓] and 54.960 (3),[✓] as[✓] renumbered, is amended to read:

54.960 (3) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to ss. ~~880.84~~ 54.962 and 54.978 for the administration of the custodial trust.

History: 1991 a. 246.

✓
SECTION 38. 880.84 of the statutes is renumbered 54.962.

✓
SECTION 39. 880.845 of the statutes is renumbered 54.964, and 54.964 (2), as
renumbered, is amended to read: X

54.964 (2) This section does not relieve a custodial trustee from liability for a
violation of s. ~~880.84~~ 54.962. ✓

History: 1991 a. 246.

✓
SECTION 40. 880.85 of the statutes is renumbered 54.966.

✓
SECTION 41. 880.855 of the statutes is renumbered 54.968, and 54.968 (1) (a),
s renumbered, is amended to read: X

54.968 (1) (a) The custodial trust was created under s. ~~880.83~~ 54.958. ✓

History: 1991 a. 246.

✓
SECTION 42. 880.86 of the statutes is renumbered 54.970.

✓
SECTION 43. 880.865 of the statutes is renumbered 54.972.

✓
SECTION 44. 880.87 of the statutes is renumbered 54.974, and 54.974 (1) and
(3), as renumbered, are amended to read: X

54.974 (1) Before accepting the custodial trust property, a person designated
as custodial trustee may decline to serve by notifying the person who made the
designation, the transferor or the transferor's legal representative. If an event
giving rise to a transfer has not occurred, the substitute custodial trustee designated
under s. ~~880.82~~ 54.954 becomes the custodial trustee, or, if a substitute custodial
trustee has not been designated, the person who made the designation may
designate a substitute custodial trustee pursuant to s. ~~880.82~~ 54.954. In other cases,
the transferor or the transferor's legal representative may designate a substitute
custodial trustee.

(3) If a custodial trustee or successor custodial trustee is ineligible, resigns,
dies or becomes incapacitated, the successor designated under s. ~~880.815 (7)~~ or

880.82 54.952 (7) or 54.954 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated or fails to act within 90 days after the ineligibility, resignation, death or incapacity of the custodial trustee, the beneficiary's conservator or guardian of the estate becomes successor custodial trustee. If the beneficiary does not have a conservator or a guardian of the estate, or the conservator or guardian of the estate fails to act, the resigning custodial trustee may designate a successor custodial trustee.

History: 1991 a. 246.

SECTION 45. 880.875 of the statutes is renumbered 54.976.

SECTION 46. 880.88 of the statutes is renumbered 54.978.

SECTION 47. 880.885 of the statutes is renumbered 54.980.

SECTION 48. 880.89 of the statutes is renumbered 54.982, and 54.982 (2) (b), as renumbered, is amended to read:

54.982 (2) (b) To the survivor of multiple beneficiaries if survivorship is provided for pursuant to s. ~~880.835~~ 54.960.

History: 1991 a. 246.

SECTION 49. 880.895 of the statutes is renumbered 54.984, and 54.984 (1) (intro.), as renumbered, is amended to read:

~~NO~~ 54.984 (1) (intro.) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of s. ~~880.815~~ 54.952 are satisfied by any of the following:

History: 1991 a. 246.

SECTION 50. 880.90 of the statutes is renumbered 54.986, and 54.986 (1), as renumbered, is amended to read:

54.986 (1) ~~This subchapter applies~~ Sections 54.950 to 54.988 apply to a transfer or declaration creating a custodial trust that refers to this subchapter if, at

the time of the transfer or declaration, the transferor, beneficiary or custodial trustee is a resident of or has its principal place of business in this state or custodial trust property is located in this state. The custodial trust remains subject to this subchapter despite a later change in residence or principal place of business of the transferor, beneficiary or custodial trustee, or removal of the custodial trust property from this state.

History: 1991 a. 246.

SECTION 51. 880.905 of the statutes is renumbered 54.988 and amended to read:

54.988 Uniformity of application and construction. This subchapter Sections 54.950 to 54.988 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting it.

History: 1991 a. 246.

SECTION 52. Nonstatutory provisions.

(1) REVIEW OF ORDER. For an individual who is subject to an order appointing a guardian under section 880.33 (4m), 2003 stats., and to an order initially issued under section 880.33 (4r), 2003 ~~statutes~~ ^{stats.}, that is in effect on the effective date of this subsection, the county department of the individual's county of residence shall, no later than 9 months after the effective date of this subsection, review the individual's status under the requirements of section 55.19 of the statutes, as created by this act.

(2) TRANSITION. Notwithstanding the treatment of section 880.33 (4m) and (4r) of the statutes by this act, all orders issued under section 880.33 (4m) and (4r), 2003 ~~statutes~~ ^{stats.}, in effect on the effective date of this subsection, remain in effect until modified or terminated by a court order under section 55.06 of the statutes.

***NOTE: The Leg. Council draft, for this provision, refers to ss. 55.15 (transfer of a protectively placed individual), 55.16 (modification of order), and 55.17 (termination of

an order), as created in that draft. Short of creating these provisions in this draft, I am unable to reference any relevant provision except s. 55.06. Please review.

SECTION 53. Effective date.

(1) This act takes effect on the first day of the 7th month beginning after publication.

DAK: [signature]

D-NOTE

Date

1. I have entirely removed s. 54.50(2) (provisions from current law under s. 50.06, stats., that were renumbered and amended into ch. 54). Therefore, the provisions will remain in ch. 50 and will not be amended. Just to clarify, is that what you want?

Tammi

2. A segment of the instructions from Bruce Tammi concerned s. 880.33(8) stats.; they were to combine s. 880.33(8)(intro.) with s. 880.33(8)(b) in a new section, numbered s. 54.175, and to "expand to POA-F and Guardian of Estate too." I have not done this. Section 880.33(8)(b) has already been renumbered s. 54.46(2)(b); and Section 880.33(8)(intro.) does not add anything necessary. s. 54.46(2)(c) concerns a durable power of attorney. ²
↑
2
What was meant by "expand" to "Guardian of Estate" remains a mystery to me.

3. I have replaced "ward's estate" with "ward's income and assets" throughout.

4. You have requested that the provisions concerning psychotropic medication that are in the Legislative Council's Special Committee on Recodification of Ch. 55, WLS:

0220/2, be included in this bill. It is very

difficult for me to know whether some of the created provisions should be included or not.

For example, I have included ^{the creation of} s. 55.14

(Involuntary administration of psychotropic medication) and

s. 55.19 (Annual review of order authorizing involuntary

administration of psychotropic medication) and

~~because it mentions the rights of an individual~~

~~who is alleged to be incompetent to refuse~~

~~psychotropic medication, s. 55.10 (Hearing on~~

~~petition for protective placement)~~

I also have amended
s. 55.06(6), stat.

Not of ~~and~~ have amended s. 55.05(2)(d), stat., ~~that~~ rather than
repealing it and creating "55.10, as is done ~~as~~ in the Leg.
Council bill.

I have not included sections concerning transfer, order modification, order termination, discharge from protective placement, appeals, etc. I have renumbered s. 880.331 (5) (a) to (g) as s. 55.195 (1) to (6) and (8) and created s. 55.195 (7) and (9); these provisions correspond to s. 54.70 that formerly were in this bill;

and 55.19(2) they are redundant to s. 55.18(2) in the legislative Council bill. To do more, beyond necessary definition changes, would ultimately require that (which is in very preliminary form)

the legislative Council draft be incorporated into this one. Please review and advise.

5 Instead of repealing s. 880.32, (your instructions

said to "dump it"), I have, after consulting Robert

Nelson, who drafts in Veterans affairs, renumbered

it to s. 45.55. It still has continuing applicability.

Note also that they are somewhat redundant to s. 54.40 (4) in this bill.

this material closely to ensure that it does enough for your purposes.

6. I have included in this draft subchs. II to V of chapter 880, stats; the subchapters are repealed, and all of this material is contained within a new subchapter of ch. 54, entitled "Uniform Acts".

You will find the creation of the new subchapter in this draft in ch. 54, together with a very small number of new definitions that are similar to

current applicable definitions in ch. 851. The vast majority of the material from the ch. 880

subchapters is toward the end of this draft,

however; time constraints have made it

impossible for me to format it as is

the rest of ch. 54 in this draft. I have

made no amendments except those necessary

for internally changed cross-references. Please

review these subchapters in current law and

let me know if you desire further amending.

7. This draft does not contain external cross-reference voluminous changes (which will be voluminous), an initial applicability section, or an analysis. These will be included in the next version of the bill, which will be formatted as an introducible bill.

DAK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

DAK-0027/P1dn

DAK:kjf:rs

September 29, 2004

1. I have entirely removed s. 54.50 (2) (provisions from current law under s. 50.06, stats., that were renumbered and amended into ch. 54). Therefore, the provisions will remain in ch. 50 and will not be amended. Just to clarify, is that what you want?
2. A segment of the instructions from Bruce Tammie concerned s. 880.33 (8), stats.; they were to combine s. 880.33 (8) (intro.) with s. 880.33 (8) (b) in a new section, numbered s. 54.175, and to "expand to POA-F and Guardian of Estate too." I have not done this. Section 880.33 (8) (b) has already been renumbered s. 54.46 (2) (b); and s. 54.46 (2) (c) concerns a durable power of attorney. Section 880.33 (8) (intro.) does not add anything necessary. What was meant by "expand" to "Guardian of Estate" remains a mystery to me.
3. I have replaced "ward's estate" with "ward's income and assets" throughout.
4. You have requested that the provisions concerning psychotropic medication that are in the Legislative Council's Special Committee on Recodification of ch. 55, WLC 0220/2, be included in this bill. It is very difficult for me to know whether some of the created provisions should be included or not. For example, I have included the creation of s. 55.14 (involuntary administration of psychotropic medication) and s. 55.19 (annual review of order authorizing involuntary administration of psychotropic medication). I have amended s. 55.05 (2) (d), stats., rather than repealing it and creating s. 55.10, as is done in the Leg. Council bill. I also have amended s. 55.06 (6), stats. I have not included sections concerning transfer, order modification, order termination, discharge from protective placement, appeals, etc. I have renumbered s. 880.331 (5) (a) to (g) as s. 55.195 (1) to (6) and (8) and created s. 55.195 (7) and (9); these provisions correspond to s. 54.70 that formerly were in this bill; they are redundant to s. 55.18 (2) and 55.19 (2) in the Legislative Council bill and to s. 55.19 (2) in this bill (I have excepted s. 55.19 (2) in s. 55.195 (intro.)). Note also that they are somewhat redundant to s. 54.40 (4) in this bill. To do more, beyond necessary definition and some cross-reference changes, would ultimately require that the Legislative Council draft (which is in very preliminary form) be incorporated into this one. Please review this material closely to ensure that it does enough for your purpose and advise.
5. Instead of repealing s. 880.32, stats. (your instructions said to "dump it"), I have, after consulting Robert Nelson, who drafts in veterans affairs, renumbered it to s. 45.55. It still has continuing applicability.

6. I have included in this draft subchs. II to V of chapter 880, stats.; the subchapters are repealed, and all of this material is contained within a new subchapter of ch. 54, entitled "Uniform Acts." You will find the creation of the new subchapter in this draft in ch. 54, together with a very small number of new definitions that are similar to current applicable definitions in ch. 851. The vast majority of the material from the ch. 880 subchapters is toward the end of this draft, however; time constraints have made it impossible for me to format it as the rest of ch. 54 in this draft. I have made no amendments except those necessary for internally changed cross-references. Please review these subchapters in current law and let me know if you desire further amending.

7. This draft does not contain external cross-reference changes (which will be voluminous), an initial applicability section, or an analysis. These will be included in the next version of the bill, which will be formatted as are introducible bills.

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("Fake bill")

2005 - 2006 LEGISLATURE

11/22/04
DAK-0027/P1

DAK:kfrs

11/04 — reviewed by Elder Law Section of
Elder Bar on 11/03/04.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

All handwritten comments provided by
Betty Abramson, UW Law School.

✓ means
I'm ok w/
their change,
if any
✓ means
I've entered
the change into
REAL BILL OR REAL
BILL
INSET

29.024 (2u) REVOCATION OF HUNTING LICENSES BASED ON INCOMPETENCY. The department shall revoke any license authorizing hunting issued to an individual for whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d. stating that the individual is incompetent to apply for a hunting license under this chapter.

29.161 Resident small game hunting license. A resident small game hunting license shall be issued subject to ~~s.~~ ss. 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license. The resident small game hunting license does not authorize the hunting of bear, deer, elk, or wild turkey.

29.164 (3) (e) *Notification; issuance; payment.* The department shall issue a notice of approval to those qualified applicants selected to receive a wild turkey hunting license. A person who receives a notice of approval and who pays the fee in the manner required by the department shall be issued a wild turkey hunting license subject to ss. 29.024 and 54.25 (2) (c) 1. d.

29.171 (1) A resident archer hunting license shall be issued subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license.

29.173 (1) ISSUANCE. A resident deer hunting license shall be issued subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license.

29.182 (4m) LIMITATION OF ONE LICENSE. A person may be issued, or transferred under ~~par. (g) sub. (4) (g).~~ only one resident elk hunting license in his or her lifetime, and the resident elk hunting license shall be valid for only one elk hunting season. The issuance, or transfer under ~~par. (g) sub. (4) (g).~~ of the license to the person is subject to ~~s. ss.~~ 29.024 ~~(2g)~~ and 54.25 (2) (c) 1. d.

29.184 (6) (c) 1r. The department shall issue a notice of approval to those qualified applicants selected to receive a Class A bear license. A person who receives a notice of approval and who pays the fees required for the license shall be issued the license subject to ~~s. ss.~~ 29.024 ~~(2g)~~ and 54.25 (2) (c) 1. d.

29.184 (6) (c) 2. A Class B bear license shall be issued subject to ~~s. ss.~~ 29.024 ~~(2g)~~ and 54.25 (2) (c) 1. d. by the department to any resident who applies for this license.

29.231 (1) A resident sports license shall be issued subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident who applies for this license, and a nonresident sports license shall be issued subject to s. 29.024 by the department to any person who is not a resident and who applies for the license.

29.235 (1) ISSUANCE. A resident conservation patron license shall be issued subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident 14 years old or older who applies for the license. A nonresident conservation patron

license shall be issued subject to s. 29.024 by the department to any person 14 years old or older who is not a resident and who applies for the license.

29.512 (1) No person may engage or be employed for any compensation or reward to guide, direct or assist any other person in hunting, fishing or trapping unless the person is issued a guide license by the department subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. No guide license for hunting or trapping may be issued to or obtained by any person who is not a resident of this state. No guide license may be issued to any person under the age of 18 years. The holder of a guide license shall comply with all of the requirements of this chapter.

45.55 Notes and mortgages of minor veterans. Notwithstanding any provision of this chapter or any other law to the contrary, any minor who served in the active armed forces of the United States at any time after August 27, 1940, and the husband or wife of such a minor may execute, in his or her own right, notes or mortgages, as defined in s. 851.15, the payment of which is guaranteed or insured by the U.S. department of veterans affairs or the federal housing administrator under the servicemen's readjustment act of 1944 ~~or~~ the national housing act, or any acts ~~supplementary thereto or amendatory thereof~~ supplementing or amending these acts. In connection with such these transactions, ~~such~~ the minors may sell, release or convey ~~such~~ the mortgaged property and litigate or settle controversies arising therefrom, including the execution of releases, deeds, and other necessary papers or instruments. ~~Such~~ The notes, mortgages, releases, deeds, and other necessary papers or instruments when so executed ~~shall~~ are not be subject to avoidance by ~~such~~ the minor or the husband or wife of ~~such~~ the minor upon either or both of them attaining the age of 18 because of the minority of either or both of them at the time of the execution thereof.

****NOTE: This is s. 880.32, as renumbered and amended.

46.011 Definitions. (intro.) In chs. 46, 48, 50, 51, 54, 55 and 58:

50.02 (2) (ad) The department shall promulgate rules that require each facility licensed under this subchapter to provide information necessary for the department to assess the facility's compliance with s. 55.14.

51.01 (5) (a) "Developmental disability" means a disability attributable to brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, mental retardation, or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mental retardation, which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual. "Developmental disability" does not include senility ~~which that~~ is primarily caused by the process of aging or the infirmities of aging degenerative brain disorder, as defined in s. 55.01 (1v).

51.03 (3) (a) 6. The number of persons for whom guardians are appointed under s. 880.33 (4m), 2003 stats.

****NOTE: Do you want reference to s. 55.14 in this subdivision? Any other ch. 55 provision?

51.20 (7) (d) 1. (intro.) If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and shall proceed as if petition had been made for guardianship and protective placement or services. If the court orders only temporary protective services for a subject individual under this paragraph, the individual shall be provided care only on an outpatient basis. The court may order psychotropic medication as a temporary

protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. ~~880.07 (1m) (c) and (cm)~~ 55.14 (3) apply, that the individual is not competent to refuse psychotropic medication, and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of ~~chronic mental illness~~ serious and persistent mental illness, as defined in s. 55.01 (6v), and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, one of the following is true:

51.20 (7) (d) 1. b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her ~~chronic~~ serious and persistent mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s. 54.36 ~~(2)~~, 971.17 (2) (e), (4) (c) and (7) (c), 980.03 (4) or 980.08 (3). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 or ch. 980.

***NOTE: Please see my ***NOTE under s. 54.36 (2).

CHAPTER 54

GUARDIANSHIPS AND CONSERVATORSHIPS

SUBCHAPTER I

DEFINITIONS

54.01 Definitions. In this chapter:

(1) "Activities of daily living" means activities relating to the performance of self care, work, and leisure activities, including dressing, eating, grooming, mobility, and object manipulation.

✓ ****NOTE: I have not added "without limitation as proposed; it is unnecessary if the term "including" is used.

(2) "Agency" means any public or private board, corporation, or association which, including a county department under s. 51.42 or 51.437, that is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437 individuals with developmental disability, mental illness, alcoholism, or drug dependency and of aging individuals.

(3) "Conservator" means a person who is appointed by a court at an individual's request under s. 54.76 (2) to manage the estate of the individual.

(4) "Court" means the circuit court or judge assigned to exercise probate jurisdiction *or the assignee of the judge under s. 757.68(4m) or 851.73(1)(g)*

✓ ****NOTE: This definition is the same as s. 851.04, stats.; do you want it?

(5) "Decedent" means the deceased individual whose estate is subject to administration.

✓ ****NOTE: This definition is the same as s. 851.05, stats.; do you want it?

(6) "Degenerative brain disorder" means the loss or disfunction of an individual's brain cells to the extent that he or she is substantially impaired in his or her ability to provide adequately for his or her own care or custody.

DAK look for ✓ ****NOTE: This is the definition (revised grammatically) from WLC: 0037/1, the Legislative Council ch. 55 draft. It has no language concerning "handling financial matters." Do you want to add language on that issue? *Yes*

(7) "Depository account" has the meaning given in s. 815.18 (2) (e).

(8) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

or to adequately manage his or her property or financial affairs

(9) "Guardian" means ~~one a person~~ appointed by a court under s. 54.10 to have care, custody and control of the person of a minor or an incompetent or the management of the estate ~~manage the income and assets and provide for the~~ ^{ESP} ~~essential requirements for health and safety and the personal needs~~ of a minor, an individual found incompetent, or a spendthrift. X

****NOTE: Please review my revised definition of "guardian"; I replaced "or" with "and". Here, the guardian must both manage and provide for, correct? ^{yes} X

(10) "Guardian of the estate" means a guardian appointed to comply with the duties specified in s. 54.19 and to exercise any of the powers specified in s. 54.20.

(11) "Guardian of the person" means a guardian appointed to comply with the duties specified in s. 54.25 (1) and to exercise any of the powers specified in s. 54.25 (2).

(12) "Heir" means any person, including the surviving spouse, who is entitled under the statutes of intestate succession to an interest in property of a decedent. The state is an heir of the decedent and a person interested under s. 45.37 (10) and (11) when the decedent was a member of the Wisconsin Veterans Home at King or at the facilities operated by the department of veterans affairs under s. 45.385 at the time of the decedent's death.

****NOTE: This definition is the same as s. 851.09, stats.; do you want it? X

(13) "Impairment" means a developmental disability, serious and persistent mental illness, degenerative brain disorder, or other like incapacity. ^{yes - see 54.01(22)} ~~make consistent?~~ X

(14) "Incapacity" means the inability of an individual effectively to receive and evaluate information ~~or to~~ communicate a decision with respect to the exercise of a right or power. ^{make or} X

****NOTE: I omitted "make [a decision]" because that seems redundant to "communicate a decision"; if an individual is unable to communicate a decision it's irrelevant that he or she has made one. Please review.

see 54.10(3)(a) 2 and 3

(15) "Individual found incompetent" means an individual who has been adjudicated by a court as meeting the requirements of s. 54.10 (3).

(16) ~~"Developmentally disabled person~~ Individual with developmental disability" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for ~~mentally retarded individuals with mental retardation~~, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include ~~a person an individual~~ affected by ~~senility dementia~~ which is primarily caused by the process of aging or ~~the infirmities of aging~~ degenerative brain disorder.

(17) "Interested person" means any of the following:

(a) For purposes of a petition for guardianship, any of the following:

1. The proposed ward, if he or she has attained 14 years of age.
2. The spouse or adult child of the proposed ward, or the parent of a proposed ward who is a minor.

3. For a proposed ward who has no spouse, child, or parent, an heir, as defined in s. 851.09, of the proposed ward that may be reasonably ascertained with due diligence.

4. Any individual who is nominated as guardian, any individual who is appointed to act as guardian or fiduciary for the proposed ward by a court of any state, any trustee for a trust established by or for the proposed ward, any person appointed as agent under a power of attorney for health care, as defined in s. 155.01

(4), or any person appointed as agent under a durable power of attorney under ch. 243.

****NOTE: Your instructions were unclear: do you wish to retain "fiduciary" in the phrase "appointed to act as ..."? yes

5. If the proposed ward is a minor, the individual who has exercised principal responsibility for the care and custody of the proposed ward during the period of 60 consecutive days immediately before the filing of the petition.

6. If the proposed ward is a minor and has no living parent, any individual nominated to act as fiduciary for the minor in a will or other written instrument that was executed by a parent of the minor.

7. If the proposed ward is receiving moneys paid, or if moneys are payable, by the federal department of veterans affairs, a representative of the federal department of veterans affairs, or, if the proposed ward is receiving moneys paid, or if moneys are payable, by the state department of veterans affairs, a representative of the state department of veterans affairs.

8. If the proposed ward is receiving long-term support services or similar public benefits, the county department of human services or social services that is providing the services or benefits.

9. The corporation counsel of the county in which the petition is filed and, if the petition is filed in a county other than the county of the proposed ward's residence, the corporation counsel of the county of the proposed ward's residence.

10. Any other person required by the court.

(b) For purposes of proceedings subsequent to an order for guardianship, any of the following:

1. The guardian.

- X
2. The spouse or adult child of the ward or the parent of a minor ward.
 3. The county of venue, through the county's corporation counsel, if the county has an interest.
 4. Any person appointed as agent under a durable power of attorney under ch. 243, unless the agency is revoked or terminated by a court.
 5. Any other individual that the court may require, including any fiduciary that the court may designate.

(18) "Least restrictive" means that which places the least possible restriction on personal liberty and the exercise of rights and that promotes the greatest possible integration of an individual into his or her community that is consistent with meeting his or her essential requirements for health, safety, habilitation, treatment, and recovery and protecting him or her from abuse, exploitation, and neglect.

(19) "Minor" means ~~a person~~ an individual who has not attained the age of 18 years.

(20) "Meet the essential requirements for physical health or safety" means perform those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness will likely occur.

(21) "Mortgage" means any agreement or arrangement in which property is used as security.

****NOTE: This definition is the same as s. 851.15, stats.; do you want it?

yes

(22) "Other like incapacities" means those conditions incurred at any age which that are the result of accident, organic brain damage, mental or physical disability, or continued consumption or absorption of substances, producing and that

produce a condition which that substantially impairs an individual from providing for ~~the individual's~~ his or her own care or custody.

****NOTE: This is s. 880.01 (8), as renumbered and amended.

(23) "Personal representative" means any individual to whom letters to administer a decedent's estate have been granted by the court or by the probate registrar under ch. 865, but does not include a special administrator.

****NOTE: This definition is the same as s. 851.23, stats.; do you want it?

(24) "Physician" has the meaning given in s. 448.01 (5).

(25) "Property" means any interest, legal or equitable, in real or personal property, without distinction as to kind, including money, rights of a beneficiary under a contractual arrangement, choses in action, and anything else that may be the subject of ownership.

****NOTE: This definition is the same as s. 851.27, stats.; do you want it?

yes

(26) "Proposed ward" means a minor, an individual alleged to be incompetent, or an alleged spendthrift, for whom a petition for guardianship is filed.

(27) "Psychologist" means a licensed psychologist, as defined in s. 455.01 (4).

(28) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20), that is used to treat a psychiatric symptom or challenging behavior.

(29) "Sale" includes an option or agreement to transfer whether the consideration is cash or credit. It includes exchange, partition, and settlement of title disputes. The intent of this subsection is to extend and not to limit the meaning of "sale."

****NOTE: This definition is the same as s. 851.29, stats.; do you want it?

yes

(30) "Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with

the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support, and that may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

(31) "Spendthrift" means a person who, because of the use of ~~intoxicants~~ alcohol or other drugs or because of gambling, ~~idleness or debauchery~~ or other wasteful course of conduct, is unable to ~~attend to business or thereby~~ manage effectively his or her financial affairs or is likely to affect the health, life, or property of ~~the person~~ himself, herself, or others so as to endanger ~~the~~ his or her support of ~~the person~~ and the person's support of his or her dependents, if any, or expose the public to such responsibility for his or her support.

***NOTE: This is s. 880.01 (9), renumbered and amended.

(32) "Standby conservator" means an individual designated by the court under s. 54.76 (2) whose appointment as conservator becomes effective immediately upon the death, resignation, or court's removal of the initially-appointed conservator, or if the initially-appointed conservator is temporarily or permanently unable, unavailable, or unwilling to fulfill his or her duties.

(33) "Standby guardian" means an individual designated by the court under s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the death, resignation, or court's removal of the initially-appointed guardian, or if the initially appointed guardian is temporarily or permanently unable, unavailable, or unwilling to fulfill his or her duties.

(34) "Successor conservator" means an individual appointed under s. 54.76 (9).

X

(35) "Successor guardian" means an individual appointed under s. 54.54.

(36) "Surviving spouse" means an individual who was married to the decedent at the time of the decedent's death. "Surviving spouse" does not include any of the following:

(a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, if the decree or judgment is not recognized as valid in this state, unless the 2 subsequently participated in a marriage ceremony purporting to marry each other or they subsequently held themselves out as husband and wife.

(b) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a 3rd individual.

(c) An individual who was party to a valid proceeding concluded by an order purporting to terminate all property rights based on the marriage with the decedent.

****NOTE: This definition is based on s. 851.30, stats.; do you want it?

Yes

(37) "Ward" means ~~a subject~~ an individual for whom a guardian has been appointed.

****NOTE: This is s. 880.01 (10), renumbered and amended.

(38) "Will" includes a codicil and any document incorporated by reference in a testamentary document under s. 853.32 (1) or (2). "Will" does not include a copy, unless the copy has been proven as a will under s. 856.17, but "will" does include a properly executed duplicate original.

****NOTE: This definition is the same as s. 851.31, stats.; do you want it?

Yes

SUBCHAPTER II

APPOINTMENT OF GUARDIAN

54.10 Appointment of guardian.

(1) A court may appoint a guardian of the person or a guardian of the estate, or both, for a proposed ward if the court determines that the individual is a minor.

(2) A court may appoint a guardian of the person or a guardian of the estate, or both, ~~estate~~ for a proposed ward if the court determines that the individual is a spendthrift. *Do we need standards or does this just mean that if the court finds it meets the definition... what about a "clear & convincing" standard?*

(3) (a) A court may appoint a guardian of the person or a guardian of the estate, or both, for an individual based on a finding that the individual is incompetent only if the court finds by clear and convincing evidence that all of the following are true:

1. The individual is aged at least 17 years and 9 months.

2. For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable effectively to receive and evaluate information or to make ^{or} communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.

3. For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:

- a. The individual has property that will be dissipated in whole or in part.
- b. The individual is unable to provide for his or her support.
- c. The individual is unable to prevent financial exploitation.

4. The individual's need for assistance in decision-making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.

*DAK
see
you
note on
A. 7
under
§ 54.01(14)*

(b) Unless the proposed ward is unable to communicate decisions effectively in any way, the determination under par. (a) may not be based on mere old age, eccentricity, poor judgment, or physical disability.

(c) In appointing a guardian under this subsection, declaring incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers it is appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the court shall consider all of the following:

1. The report of the guardian ad litem, as required in s. 54.40 (4).
2. The medical or psychological statement provided under s. 54.36 and any additional medical, psychological, or other evaluation ordered by the court pursuant to the request of a guardian ad litem under s. 54.40 (4) (e) or offered by a party and received by the court.
3. Whether the proposed ward has engaged in any advance planning for financial and health care decision-making that would avoid guardianship, including executing a durable power of attorney under ch. 243, a power of attorney for health care, as defined in s. 155.01 (4), a trust, or a jointly held account.
4. Whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian is the least restrictive means to provide for the individual's need for a substitute decision-maker.
5. The preferences, desires, and values of the individual with regard to personal needs or property management.
6. The nature and extent of the individual's care and treatment needs and property and financial affairs.

7. Whether the individual's situation places him or her at risk of abuse, exploitation, neglect, or violation of rights.

8. Whether the individual can adequately understand and appreciate the nature and consequences of his or her impairment.

9. The individual's management of the activities of daily living.

10. The individual's understanding and appreciation of the nature and consequences of any inability he or she may have with regard to personal needs or property management.

11. The extent of the demands placed on the individual by his or her personal needs and by the nature and extent of his or her property and financial affairs.

12. Any physical illness of the individual and the prognosis of the individual.

13. Any mental disability, alcoholism, or other drug dependence of the individual and the prognosis of the mental disability, alcoholism, or other drug dependence.

14. Any medication with which the individual is being treated and the medication's effect on the individual's behavior, cognition, and judgment.

15. Whether the effect on the individual's evaluative capacity is likely to be temporary or long-term, and whether the effect may be ameliorated by appropriate treatment.

16. Other relevant evidence.

(d) Before appointing a guardian under this subsection, declaring incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers it is appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the court shall determine if additional medical, psychological, social, vocational, or educational evaluation is necessary for the court to make an informed decision

respecting the individual's competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made.

(e) In appointing a guardian under this subsection, the court shall authorize the guardian to exercise only those powers under ss. 54.18, 54.20, and 54.25 (2) that are necessary to provide for the individual's personal needs and property management and to exercise the powers in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.

(4) If the court appoints both a guardian of the person and a guardian of the estate for an individual, the court may appoint separate persons to be guardian of the person and of the estate, or may appoint one person to act as both.

(5) The court may appoint co-guardians of the person or co-guardians of the estate, subject to any conditions that the court imposes.

54.12 Exceptions to appointment of guardian. (1) SMALL ESTATES. If a

minor or an individual found incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$10,000 possess assets valued at \$20,000 or less, any court wherein in which an action or proceeding involving said property the assets is pending may, in its discretion, without requiring the appointment of a guardian, order that the register in probate do one of the following:

(a) Deposit the property in a savings an interest-bearing account in a bank, the payment of whose accounts in cash immediately upon default of the bank are or other financial institution insured by an agency of the federal deposit insurance corporation; deposit in a savings account in a savings bank or a savings and loan association that has its deposits insured by the federal deposit insurance corporation; deposit in a savings account in a credit union having its deposits

Should we
replace with
the amount
specified
in § 54.12(2)
in case the
game changes?
(That's
not what you did
1 next
age at
54.12(2).)

the amount
specified in s. 54.12(2)
(1g) (intro.)

guaranteed by the ~~Wisconsin credit union savings insurance corporation or by the national board, as defined in s. 186.01 (3m);~~ government or invest the property in interest-bearing obligations of the United States. The fee for ~~the clerk's services of~~ the register in probate in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a) 814.66 (1) (n).

(b) Payment Make payment to the natural guardian parent of the minor or to the person having actual custody of the minor.

(c) Payment Make payment to the minor.

(d) Payment Make payment to the person having actual or legal custody of the individual found incompetent or to the person providing for the incompetent's care and maintenance of the individual found incompetent for the benefit of the individual found incompetent.

(e) Make payment to the agent under a durable power of attorney of the ward.

(f) Make payment to the trustee of any trust created for the benefit of the ward.

(2) INFORMAL ADMINISTRATION. If a minor or an individual found incompetent, except for his or her incapacity, is entitled to possession of personal property assets of a value of \$5,000 the amount specified in s. 867.03 (1g) (intro.) or less from an estate administered through informal administration under ch. 865, the personal representative may, without the appointment of a guardian, do any of the following:

****NOTE: With respect to the advice received from the Bar's Real Property, Probate and Trust section concerning s. 54.12 (2) (intro.), I have changed "savings account" in s. 54.12 (1) (a) to "interest-bearing account." However, I do not understand the rest of the Bar's Real Property, Probate and Trust section's response. What does "it should be extended to formal probate and summary proceedings" mean? Please state explicitly, if this is a reference to a specific statute or statutes, what they are and what you want me to do.

(a) With the approval of the register in probate, take one of the actions under specified in sub. (2) (1) (a) to (f).

see my note on P. 17

THANK YOU
Betsy: ignore

(b) With the approval of the guardian ad litem of the minor or individual found incompetent, take one of the actions under specified in sub. (2) (1) (a) to (f) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

(3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein in which an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment, subject to any limitations the court may impose, to a custodian for the minor designated by the court under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 or under the uniform gifts to minors act or uniform transfers to minors act of any other state.

SUBCHAPTER III

NOMINATION OF GUARDIAN;

POWERS AND DUTIES; LIMITATIONS

54.15 ~~Nomination; selection of guardians~~ Selection of guardian; nominations; preferences; other criteria. The court shall do one of the following and shall consider all of the following nominations ~~made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following, applicable preferences, and criteria in determining who is appointed as guardian:~~

(1) OPINIONS OF PROPOSED WARD AND FAMILY. ~~In appointing a guardian, the~~ The court shall take into consideration the opinions of the ~~alleged incompetent~~ proposed ward and of the members of the his or her family as to what is in the best interests of the proposed ~~incompetent~~ ward. However, the best interests of the proposed ~~incompetent~~ ward shall control in making the determination when the opinions of

the family are in conflict with ~~the clearly appropriate decision~~ those best interests. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. ~~If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian.~~

(2) AGENT UNDER DURABLE POWER OF ATTORNEY. The court shall appoint as guardian of the estate an agent under a proposed ward's durable power of attorney, unless the court finds that the appointment of an agent is not in the best interests of the proposed ward.

(3) AGENT UNDER A POWER OF ATTORNEY FOR HEALTH CARE. The court shall appoint as guardian of the person the agent under a proposed ward's power of attorney for health care, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.

(4) PERSON NOMINATED BY PROPOSED WARD.

(a) Any ~~person~~ individual other than a minor aged 14 years or younger may, ~~at such time as if the person has sufficient capacity~~ individual does not have incapacity to such an extent that he or she is unable to form ~~an intelligent a~~ reasonable and informed preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating ~~a person~~ another to be appointed as guardian of his or her person or ~~property~~ estate or both ~~in the event that if a guardian is in the future appointed.~~ Such nominee shall be appointed as guardian by the for the individual. The court shall appoint this nominee as guardian unless the court finds that the appointment ~~of such nominee~~ is not in the best

interests of the person for whom, or for whose property, the guardian is to be appointed proposed ward.

(b) A minor ~~over~~ who is 14 years or older may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is ~~without~~ outside of the state, or if other good reason exists, the court may dispense with the minor's right of nomination.

NO See Theresa Roetter's remarks *RP; 880.09 (3)*
(c) If neither parent of a minor who is 14 years or older is suitable and willing to be appointed guardian, the court may appoint the nominee of ~~a~~ the minor.

proposed wards (5) PREFERENCE PARENT OF A PROPOSED WARD. If one or both of the parents of a minor, ~~a developmentally disabled person or a person with other like incapacity or an individual with developmental disability or with serious and persistent mental illness~~ are suitable and willing, the court shall appoint one or both of ~~them~~ as guardian unless the proposed ward objects or unless the court finds that the appointment is not in the minor's best interests. The court shall appoint a corporate guardian ~~under s. 880.35 only if no suitable individual guardian is available~~.

****NOTE: So that this provision will not potentially conflict with sub. (2), (4), or (6), I have added a "best interests" standard. Please review. *yes*

****NOTE: Having made the changes proposed by Theresa Roetter, I now fail to see the reason that par. (c) should continue to exist; it is subsumed by par. (b). *Req'd: delete*

****NOTE: It is unclear to me what you want to do with s. 880.16 (1), stats.; Theresa Roetter's decisions did not cover this provision explicitly, nor did Bruce Tammi's. I have repealed it in the "real" bill for now. *OK*

(6) TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS NOMINATION BY PROPOSED WARD'S PARENTS. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate ~~of~~ for any of his or her minor children who ~~are~~ is in need of guardianship, unless the court finds that appointment of the guardian or successor guardian is not in the minor's best interest. For a person ~~over the age of~~ an individual who is aged 18 or older and is found to be

X

in need of guardianship under s. 880.33 54.10 by reason of a developmental disability or ~~other like incapacity~~ serious and persistent mental illness, a parent may by will nominate a testamentary guardian. The parent may waive the requirement of a bond for such an estate that is derived through a will.

****NOTE: Does this provision now read as you wish?

yes

****NOTE: As this provision now reads, both a court and DHFS would have to approve the entity. Do you want to require DHFS to promulgate these rules? (If there are no rules, DHFS would be unable to approve the entity, because it wouldn't have the criteria to do so.) If you do want to have rules promulgated, be aware that it could take up to a year or even longer for it to be done, although we do draft nonstatutory provisions that require rules to be submitted to the Legislative Council Rules Clearinghouse by a certain date or provisions that permit rules to be promulgated as emergency rules without requiring that a finding of emergency be first made. What would you like for me to do?

Not prob -
these are existing
rules - may want
to change.

There are already rules for corp guardians HES 85, Wis Adm. Code

~~(7) NONPROFIT CORPORATION AS GUARDIAN~~ PRIVATE NONPROFIT CORPORATION OR OTHER ENTITY. A private nonprofit corporation organized under ch. 181, 187, or 188 is qualified to act or an unincorporated association that is approved by the court may be appointed as guardian of the person or of the property estate or both, of an individual found to be in need of guardianship under s. 880.33, if a proposed ward, if no suitable individual is available as guardian and the department of health and family services, under rules established promulgated under ~~ch. 55~~ this chapter, finds the corporation or entity to be a suitable agency to perform such duties.

****NOTE: So that this provision will not potentially conflict with sub (2), (4), or (5), I have added a "best interests" standard. Please review.

OK
yes

(8) STATEMENT OF ACTS BY PROPOSED GUARDIAN. (a) At least 96 hours before the hearing under s. 54.44, the proposed guardian shall submit to the court a sworn and notarized statement as to whether any of the following is true:

1. The proposed guardian has been convicted of a crime, as defined in s. 939.12.
2. The proposed guardian has filed for or received protection under the federal bankruptcy laws.

or criminal proceedings are currently pending
Criminal proceedings currently pending or convicted.

3. Any license, certificate, permit, or registration of the proposed guardian that is required under chs. 440 to 480 or by the laws of another state for the practice of a profession or occupation has been suspended or revoked.

4. The proposed guardian is listed under s. 146.40 (4g) (a) 2.

(b) If par. (a) 1., 2., or 3. applies to the proposed guardian, he or she shall include in the sworn and notarized statement a description of the circumstances surrounding the applicable event under par. (a) 1., 2., or 3.

(9) LIMITATION ON NUMBER OF WARDS OF GUARDIAN. ~~No person, except a nonprofit corporation approved by the department of health and family services under s. 880.35, who has~~ individual may have guardianship of the person of more than 5 or ~~more adult wards who are~~ unrelated to the person may accept appointment individual, except that a court may, under circumstances that the court determines are appropriate, waive this limitation to authorize appointment of the individual as guardian of the person of ~~another adult ward unrelated to the person, unless approved by the department. No such person may accept appointment as guardian of more than 10 such~~ additional adult wards who are unrelated to the person individual. A corporation or entity that is approved by the department under sub. (7) is not limited in the number of adult wards for which the corporation or entity may accept appointment by a court as guardian.

54.18 General duties and powers of guardian; limitations; immunity.

(1) A ward retains all his or her rights that are not assigned to the guardian or otherwise limited by statute. A guardian acting on behalf of a ward may exercise only those powers that the guardian is authorized to exercise by statute or court order. A guardian may be granted only those powers necessary to provide for the personal

needs or property management of the ward in a manner that is appropriate to the ward and that constitutes the least restrictive form of intervention.

(2) A guardian shall do all of the following:

(a) Exercise the degree of care, diligence, and good faith when acting on behalf of a ward that an ordinarily prudent person exercises in his or her own affairs.

(b) Advocate for the ward's best interests, including, if the ward is protectively placed under ch. 55 and if applicable, advocating for the ward's applicable rights under ss. 50.09 and 51.61.

(c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation to the ward.

(d) Notify the court of any change of address of the guardian or the ward.

(3) No guardian may do any of the following:

(a) ~~No guardian shall lend guardianship~~ Lend funds of the ward to himself or herself or, unless the court first approves the terms, rate of interest, and any requirement for security, lend funds of the ward to another.

(b) Lend funds of the ward to another individual or to an entity, unless the court first approves the terms, rate of interest, and any requirement for security.

(c) ~~No guardian shall purchase~~ Purchase property of the ward, ~~unless sold at public sale except at fair market value, subject to ch. 786, and~~ with the approval of the court, ~~and then only if the guardian is a spouse, parent, child, brother or sister of the ward or is a cotenant with the ward in the property.~~

****NOTE: I corrected the numbering of the paragraphs under this subsection (I had mistakenly renumbered par. (a) from s. 880.19 (4) (c) as s. 54.18 (3) (h), rather than s. 54.18 (3) (a)).

(4) Any A guardian of the person or of the estate is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or

she performs the duties in good faith, in the best interests of the ward, and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

54.19 Duties of guardian of the estate. Subject to s. 54.18 (1) and except as specifically limited in the order of appointment, the guardian of the estate shall, following any applicable procedures of s. 54.22, do all of the following in order to provide a ward with the greatest amount of independence and self-determination with respect to property management in light of the ward's functional level, understanding, and appreciation of his or her functional limitations and the ward's personal wishes and preferences with regard to managing the activities of daily living:

(1) ~~The guardian of the estate shall take~~ Take possession of all of the ward's real and personal property, and of any rents, income, issues and benefits ~~therefrom,~~ whether accruing before or after the guardian's appointment from the property, and of the any proceeds arising from the sale, mortgage, lease, or exchange ~~thereof of the property and prepare an inventory of these.~~ Subject to ~~such~~ this possession, the title of all ~~such estate~~ the income and assets of the ward and to the increment and proceeds ~~thereof shall be~~ of the income and assets of the ward is in the ward and not in the guardian. ~~It is the duty of the guardian of the estate to protect and preserve it, to retain, sell and invest it as hereinafter provided, to account for it faithfully, to perform all other duties required of the guardian by law and at the termination of the guardianship to deliver the assets of the ward to the persons entitled thereto.~~

(2) Retain, expend, distribute, sell, or invest the ward's property, rents, income, benefits, and proceeds and account for all of them, subject to ch. 786.

(3) Determine, if the ward has executed a will, the will's location, determine the appropriate persons to be notified in the event of the ward's death, and, if the death occurs, notify those persons.

(4) Use the ward's income and property to maintain and support the ward and any dependents of the ward.

(5) Prepare and file an annual account as specified in s. 54.62.

(6) At the termination of the guardianship, deliver the ward's assets to the persons entitled to them.

(7) ~~Every general guardian shall~~ With respect to claims, pay the just legally enforceable debts of the ward ~~out of, including by filing tax returns and paying any taxes owed, from~~ the ward's personal estate and the income of the ward's real estate, if sufficient, and if not, then out of the ward's real estate upon selling the same as provided by law. ~~But a temporary guardian shall pay the debts of his or her ward only on order of the court and assets.~~

(8) File, with the register of deeds of any county in which the ward possesses real property of which the guardian has actual knowledge, a sworn and notarized statement that specifies the legal description of the property, the date that the ward is determined to be an incompetent, and the name, address, and telephone number of the ward's guardian and any surety on the guardian's bond.

(9) Perform any other duty required by the court order.

54.20 Powers of guardian of the estate. (1) STANDARD (intro.) The In exercising the powers under this section, the guardian of the estate ~~may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance without regard to ch. 881, so long as such retention constitutes the~~

~~exercise of shall use the judgment and care under the circumstances then prevailing, which that~~ persons of prudence, discretion, and intelligence exercise in the management of their own affairs, ~~not in regard to speculation but in regard to including the permanent, rather than speculative,~~ disposition of their funds, considering and consideration of the probable income ~~as well as the probable and~~ safety of their capital. In addition, in exercising powers and duties under this section, the guardian of the estate shall consider, consistent with the functional limitations of the ward, all of the following:

(a) The ward's understanding of the harm that he or she is likely to suffer as the result of his or her inability to manage property and financial affairs.

(b) The ward's personal preferences and desires with regard to managing his or her activities of daily living.

(c) The least restrictive form of intervention for the ward.

(2) POWERS REQUIRING COURT APPROVAL. The guardian of the estate may do any of the following with respect to the ward's income and assets only with the court's prior written approval following any petition and upon any notice and hearing that the court requires:

(a) Make gifts, under the terms, including the frequency, amount, and donees specified by the court in approval of a petition under s. 54.21.

(b) ~~Upon petition by the guardian, a parent, the spouse, any issue or next of kin of any person, assets of the person may, in the discretion of the court and upon its order, after such notice as the court may require, be transferred~~ Transfer assets of the ward to the trustee or trustees of an any existing revocable living trust created by the person for the benefit of that the ward has created for himself or herself and those dependent upon the person for support any dependents, or, if the ward is a

minor, to the trustee ~~or trustees of a~~ any trust created for the exclusive benefit of the person, ~~if a minor, which~~ ward that distributes to him or her at age 18 or 21, or, if the ward dies before age 18 or 21, to his or her estate, or as ~~he or she appoints if he or she dies prior to age 18 or 21~~ the ward has appointed by a written instrument that is executed after the ward attains age 14.

(c) Establish a trust as specified under 42 USC 1396p (d) (4) and s. 49.454 and transfer assets into the trust.

(d) Purchase an annuity or insurance contract and exercise rights to elect options or change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

(e) Ascertain, establish, and exercise any rights available to the ward under a retirement plan or account.

(f) Exercise any elective rights that accrue to the ward as the result of the death of the ward's spouse or parent.

(g) Release or disclaim, under s. 854.13, any interest of the ward that is received by will, intestate succession, nontestamentary transfer at death, or other transfer.

(h) ~~A guardian of the estate If appointed under this chapter for a married person may~~ ward, ~~exercise with the approval of the court, except as limited under s. 880.37,~~ any management and control right over the marital property or property other than marital property and any right in the business affairs ~~which that the married person~~ ward could exercise under ch. 766 if the ~~person were not determined under s. 880.12 to be a proper subject for guardianship. Under this section, a guardian may~~ ward were not an individual found incompetent, consent to act together in or join in any transaction for which consent or joinder of both spouses is required, or ~~may execute~~ under s. 766.58 a marital property agreement with the

other ward's spouse or, if appointed for a ward who intends to marry, with the ward's intended spouse, but may not make, amend or revoke a will.

****NOTE: This is s. 880.173 (1), as renumbered and amended. You have decided to repeal s. 880.37, stats., to which this paragraph refers, so I have stricken the reference. Please review this paragraph; have I captured your intent? Yes.

****NOTE: I understand that, because of the creation of s. 54.21, s. 54.20 (2) (h) is intended to codify the court's interpretation of s. 880.173 in *The Guardianship of F.E.H.*, 154 Wis. 2d 576 (1990). Yes.

(i) Provide support for an individual whom the ward is not legally obligated to support.

(j) Convey or release a contingent or expectation interest in property, including a marital property right and any right of survivorship that is incidental to a joint tenancy or survivorship marital property.

(k) In all cases ~~where~~ in which the court ~~deems it~~ determines that it is advantageous to continue the business of a ward, ~~such business may be continued by the guardian of the estate on such~~ continue the business on any terms and conditions ~~as may be~~ specified in the order of the court.

(L) ~~The guardian or a creditor of any ward may apply~~ Apply to the court for adjustment of any claims against the ward incurred ~~prior to~~ before entry of the order appointing the guardian or the filing of a lis pendens as provided in s. ~~880.215~~ 54.47. The court shall by order fix the time and place it will adjust claims and the time within which all claims ~~must~~ shall be presented ~~or be barred~~. Notice of ~~the time and place so fixed and limited~~ these times and the place shall be given by publication as ~~in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents~~ provided in s. 879.05 (4), and ch. 859 generally shall apply. As ~~in the settlement of estates of deceased persons, after~~ After the court has made the

order, no action or proceeding may be commenced or maintained in any court against the ward upon any claim of over which the circuit court has jurisdiction.

(3) POWERS THAT DO NOT REQUIRE COURT APPROVAL. The guardian of the estate may do any of the following without first receiving the court's approval:

(a) Provide support from the ward's income and assets for an individual whom the ward is legally obligated to support.

(b) Enter into a contract, other than a contract that is specified in sub. (2) or that is otherwise prohibited under this chapter.

(c) Exercise options of the ward to purchase securities or other property.

(d) Authorize access to or release of the ward's confidential financial records.

(e) Apply for public and private benefits.

(f) ~~The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain~~ Retain any real or personal property possessed by ~~that~~ the ward at the time of the appointment of the ~~possesses when the~~ guardian or ~~subsequently acquired by~~ is appointed or that the ward acquires by gift or inheritance for such period of time as shall be designated in the order of the court approving such retention, without regard to ch. 881 during the guardian's appointment.

(g) ~~The guardian of the estate may, without approval of the court, sell~~ Subject to ch. 786, sell any property of the guardianship estate acquired by the guardian pursuant to sub. (4) at fair market value.

(h) ~~The guardian of the estate may, without approval of the court, invest~~ Invest and reinvest the proceeds of sale of any guardianship assets of the ward and any of the ward's other moneys in the guardian's possession in accordance with ch. 881.

(i) ~~The guardian of the estate may, with the approval of the court, after~~
Notwithstanding ch. 881, after such notice as the court directs, and subject to ch. 786,
invest the proceeds of sale of any guardianship assets of the ward and any of the
ward's other moneys in the guardian's possession in such the real or personal
property ~~as the court determines that is determined by the court~~ to be in the best
interests of the guardianship estate, ~~without regard to of the ward ch. 881.~~

(j) ~~The guardian shall settle~~ Settle all claims and accounts of the ward and ~~may~~
~~demand, sue for, collect and receive all debts and claims for damages due him or her,~~
~~or may, with the approval of the circuit court, compound and discharge the same, and~~
~~shall appear for and represent his or her the~~ ward in all actions and proceedings
except where those for which another person is appointed ~~for that purpose.~~

(k) Take any other action, except an action specified under sub. (2), that is
reasonable or appropriate to the duties of the guardian of the estate.

54.21 Petition to transfer ward's assets to another. (1) In this section:

(a) "Disabled" has the meaning given in s. 49.68⁴ (1) (a) 1.

****NOTE: Is this definition acceptable to you?

(b) "Other individual" means any of the following:

1. The ward's spouse, if any.
2. The ward's close friend, if any, and if the close friend meets the requirements
of s. 50.94 (3) (e) 1. and 2.
3. The guardian ad litem of the ward's minor or disabled child, if any.
4. The ward's disabled child, if any.
5. Any of the ward's siblings who has an ownership interest in property that
is co-owned with the ward.

✓
DAK fip
+

6. Any of the ward's children who provided care for the ward as specified in 42 USC 1396p (c) (2) (A) iv.

(c) "Will, trust, or other instrument" includes a revocable or irrevocable trust, a durable power of attorney, or a marital property agreement.

(2) A guardian or other individual who seeks an order authorizing and directing the guardian of the estate to transfer any of a ward's income or assets to or for the benefit of any person shall submit to the court a petition that specifies all of the following:

(a) Whether a proceeding by anyone seeking this authority with respect to the ward's income and assets was previously commenced and, if so, a description of the nature of the proceeding and the disposition made of it.

(b) The amount and nature of the ward's financial obligations, including moneys currently and prospectively required to provide for the ward's maintenance, support, and well-being and to provide for others dependent upon the ward for support, regardless of whether the ward is legally obligated to provide the support. If the petitioner has access to a copy of a court order or written agreement that specifies support obligations of the ward, the petitioner shall attach the copy to the petition.

(c) The income and assets of the ward that is the subject of the petition, the proposed disposition of the property, and the reasons for the disposition.

(d) The wishes, if ascertainable, of the ward.

(e) As specified in sub. (3), whether the ward has previously executed a will or similar instrument.

(f) A description of any significant gifts or patterns of gifts that the ward has made.